

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROSS MACLIN,

Plaintiff,

v.

SCOTT HOLMES,

Defendant.

Case No. 1:18-cv-756

HON. JANET T. NEFF

/

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendant filed a motion for summary judgment. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court grant Defendant's motion and close this case. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation, to which Defendant filed a response. The Court has also considered Plaintiff's reply to Defendant's response, although there is no provision in the rules for such a filing. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

In his seven overlapping objections to the Report and Recommendation, Plaintiff presents three arguments. First, as a threshold matter, Plaintiff argues that the Magistrate Judge erred in "[s]imply accepting Defendant's portions of what occurred on October 19, 2017" and "omit[ting] material facts that Plaintiff stated on October 19, 2017" (Pl. Obj., ECF No. 36 at PageID.373, 375-

376, 377, 378-379). Plaintiff's argument lacks merit. The Magistrate Judge summarized the allegations in Plaintiff's complaint and properly stated the standard for reviewing motions for summary judgment (R&R, ECF No. 35 at PageID.354-356). Plaintiff's objections in this regard are properly denied.

Second, with regard to his Eighth Amendment deliberate indifference claim, Plaintiff argues that where Defendant did not conduct any physical exam on October 9, 2017, the day on which Plaintiff alleges Defendant decided not to renew Plaintiff's medication, the Magistrate Judge erred in determining that Defendant's decision was "based upon his exercise of his medical judgments and medical exam" (Pl. Obj., ECF No. 36 at PageID.374, 376; Pl. Reply, ECF No. 38 at PageID.421-422). Plaintiff's argument fails to identify any factual error by the Magistrate Judge. As Defendant points out in response (ECF No. 37 at PageID.415), the medical records show that Defendant did not discontinue or alter Plaintiff's prescription on October 9, 2017; rather, Defendant simply made a progress note indicating Plaintiff's medication was prescribed "PRN," i.e., "as needed" (ECF No. 24 at PageID.164). The medical records further show that on October 19, 2017, after conducting a physical exam of Plaintiff, Defendant chose not to renew the prescription, determining that there was "no evidence from this exam or recent clinical events to support the indefinite prescribing" (*id.* at PageID.173). Plaintiff's argument also fails to identify any legal error in the Magistrate Judge's ultimate conclusion that where Plaintiff simply disagrees with the medical treatment he received, such disagreement does not implicate the Eighth Amendment (R&R, ECF No. 35 at PageID.358, 361). Plaintiff's objections are therefore properly denied.

Last, with regard to his retaliation claim, Plaintiff argues that the Magistrate Judge erred in determining that "Plaintiff failed to provide any proof of the complaints filed against Defendant to

the Warden” (Pl. Obj., ECF No. 36 at PageID.374-375, 377; Pl. Reply, ECF No. 38 at PageID.423). Plaintiff’s argument lacks merit. The Magistrate Judge expressly found that the two complaints Plaintiff sent the warden “satisfy the protected conduct element” of his retaliation claim (R&R, ECF No. 35 at PageID.362). Plaintiff’s objections in this regard are properly denied.

Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 36) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 35) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant’s Motion for Summary Judgment (ECF No. 22) is GRANTED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: September 27, 2019

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge